

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
SAN ANGELO DIVISION

UNITED STATES OF AMERICA

v.

MARIO MARES

No. 6:23-MJ-027-BU-1
ECF

GOVERNMENT'S SUPPLEMENTAL MOTION FOR PRETRIAL DETENTION

The United States asks for the pretrial detention of the defendant, Mario Mares, under Title 18, United States Code, Sections 3142(e) and 3142(f). This case is eligible for a detention order under 18 U.S.C. § 3142(f) because it is a case that involves both (a) a felony that involves the possession or use of a firearm, destructive device, or any other dangerous weapon (18 U.S.C. § 3142(f)(1)(E)); and (2) a serious risk defendant will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate a prospective witness or juror (18 U.S.C. § 3142 (f)(2)(B)). This Court should detain defendant, under 18 U.S.C. § 3142(e), because no condition or combination of conditions will reasonably assure both the defendant's appearance as required and the safety of any other person and the community.

Following the defendant's initial hearing on August 3, 2023, and after granting the government's motion for a three-day continuance, the Court set the defendant's detention hearing for August 8, 2023. The government submits this supplemental motion as follows:

BACKGROUND

On or about July 26, 2023, in Case Number 1:23-CR-252 (ACR), a grand jury sitting in the U.S. District Court for the District of Columbia indicted the defendant for multiple crimes, including entering and remaining in a restricted building or grounds with a deadly or dangerous weapon, in violation of Title 18, United States Code, Section 1752(a)(1) and (b)(1)(A), disorderly

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and disruptive conduct in a restricted building or grounds, in violation of Title 18, United States Code, Section 1752(a)(2), unlawful possession of a firearm on Capitol grounds or buildings, in violation of Title 40, United States Code, Section 5104(e)(1)(A), and disorderly conduct in a Capitol building, in violation of Title 40, United States Code, Section 5104(e)(2)(D). The government proffers the following information regarding the events at the United States Capitol on January 6, 2021, and defendant Mario Mares' role in the offense.

A. The Attack at the U.S. Capitol on January 6, 2021

The U.S. Capitol, which is located at First Street, SE, in Washington, D.C., is secured twenty-four hours a day by U.S. Capitol Police (USCP). Restrictions around the Capitol include permanent and temporary security barriers and posts manned by USCP. Only authorized people with appropriate identification are allowed access inside the Capitol.

On January 6, 2021, the exterior plaza of the Capitol was closed to members of the public.

On January 6, 2021, a joint session of the United States Congress convened at the Capitol, which is located at First Street, SE, in Washington, D.C. During the joint session, elected members of the United States House of Representatives and the United States Senate were meeting to certify the vote count of the Electoral College of the 2020 Presidential Election, which had taken place on Tuesday, November 3, 2020. The joint session began at approximately 1:00 PM. Shortly thereafter, by approximately 1:30 PM, the House and Senate adjourned to separate chambers to resolve a particular objection. Vice President Mike Pence was present and presiding, first in the joint session, and then in the Senate chamber.

As the proceedings continued in both the House and the Senate, and with Vice President Pence present and presiding over the Senate, a large crowd gathered outside the Capitol. Temporary and permanent barricades, as noted above, were in place around the exterior of the

Capitol, and USCP officers were present and attempting to keep the crowd away from the Capitol and the proceedings underway inside.

At approximately 2:00 PM, certain individuals in the crowd forced their way through, up, and over the barricades. Officers of the USCP were forced to retreat and the crowd advanced to the exterior façade of the building. The crowd was not lawfully authorized to enter or remain in the building and, prior to entering the building, no members of the crowd submitted to security screenings or weapons checks as required by USCP officers or other authorized security officials.

At such time, the certification proceedings were still underway, and the exterior doors and windows of the Capitol were locked or otherwise secured. Members of the USCP attempted to maintain order and keep the crowd from entering the Capitol; however, shortly after 2:00 PM, individuals in the crowd forced entry into the Capitol, including by breaking windows and by assaulting members of law enforcement, as others in the crowd encouraged and assisted those acts. The riot resulted in substantial damage to the Capitol, requiring the expenditure of more than \$1.4 million dollars for repairs.

Shortly thereafter, at approximately 2:20 PM, members of the House of Representatives and of the Senate, including the President of the Senate, Vice President Pence, were instructed to—and did—evacuate the chambers. Accordingly, all proceedings of the United States Congress, including the joint session, were effectively suspended until shortly after 8:00 PM on January 6, 2021. In light of the dangerous circumstances caused by the unlawful entry to the Capitol—including the danger posed by individuals who had entered the Capitol without any security screening or weapons check—Congressional proceedings could not resume until after every unauthorized occupant had been removed from or left the Capitol, and USCP confirmed that the building was secured. The proceedings resumed at approximately 8:00 PM after the building had

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been secured. Vice President Pence remained in the Capitol from the time he was evacuated from the Senate Chamber until the session resumed.

B. Mario Mares' Participation in the January 6, 2021, Capitol Riot

The evidence indicates, and a federal grand jury has found probable cause, that Mares entered and remained on Capitol grounds on January 6, 2021, at a time when those grounds were restricted, and that he did so while armed with a firearm. To give the Court some context, however, we provide the additional background relevant to this hearing:

On December 27, 2020, Mares posted on the social media site www.freedomlake.com that he “believe[s] that every #patriot should on January 6 if you can’t make it to Washington DC you should go to your state capitol and local mayors offices heavily armed and drag out and either jail or execute all the known CORRUPT #politicians for treason!” A screenshot of that post is included below:

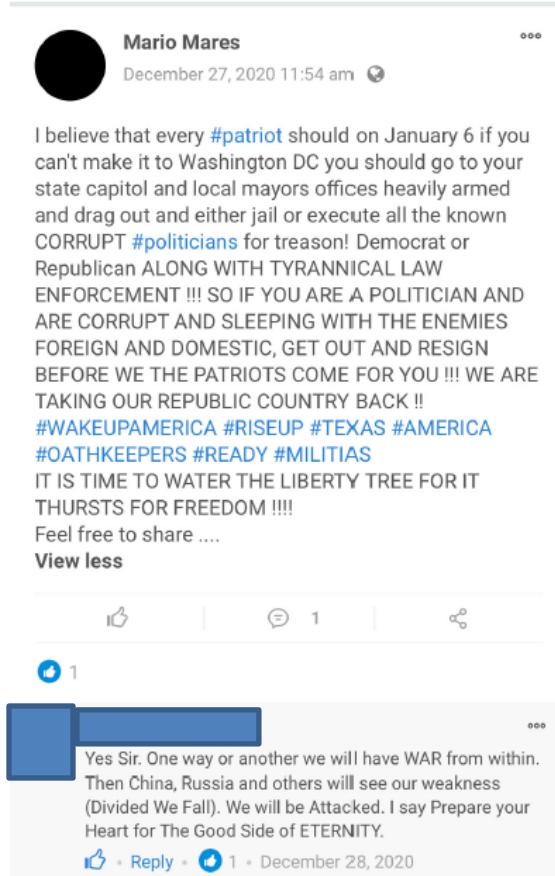


Figure 1

Around the same time, Mares made other similar posts on the social media site www.freedomlake.com, which, among other things, appeared to threaten the then-sitting Speaker of the House of Representatives, Congresswoman Nancy Pelosi and other elected officials (e.g., “Fuckin #Pelosi . . . YOU WANT VIOLENCE??! . . . WE ARE FUCKIN TIRED OF ALL YOUR SHIT !! WE ARE GOING TO FIND YOU AND WE THE PEOPLE WITH NO MERCY ARE GOING TO HANG OR EXECUTE YOU !!!” and “Time to start the LYNCHING party !! #PATRIOTS coming for you corrupt #politicians”):

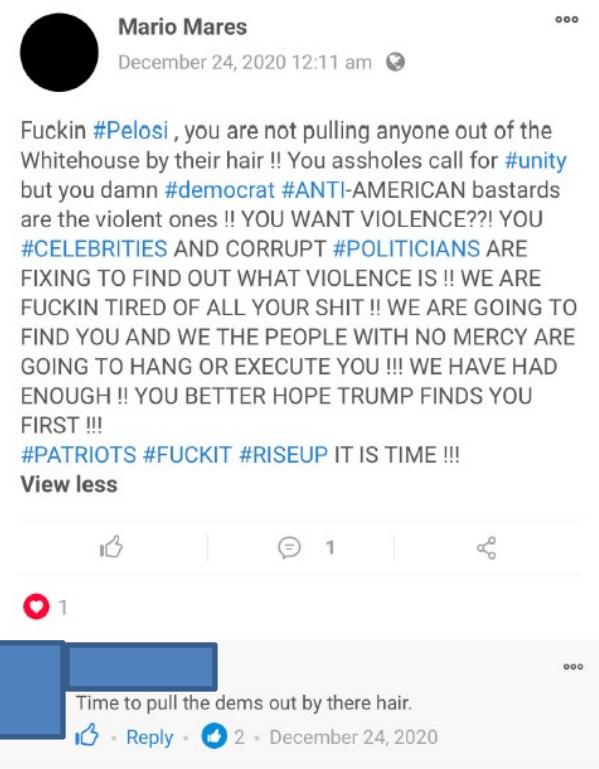


Figure 2



Figure 3

On January 2, 2021, Mares reached out to Subject-1 of Ballinger, Texas, by text message, and the two men discussed traveling to Washington, D.C. together to attend the January 6, 2021 Rally in support of then-President Donald Trump held near the U.S. Capitol. Mares and Subject-1 continued to communicate via text message before Subject-2 of Ballinger, Texas, was added to a text group in the evening of January 3, 2021. As depicted below, in the group text conversation, Mares (whose text messages are in blue below) told the group that guns were prohibited in D.C. without a license. Subject-1 responded that, based on what he was seeing on Facebook, millions

of people would be in Washington, D.C., carrying guns. In response, Mares stated that Proud Boys¹ and Three Percenters² were already there:



Figure 4

¹ The Proud Boys are a group that describes itself as a “pro-Western fraternal organization for men who refuse to apologize for creating the modern world; aka Western Chauvinists,” and whose members routinely attend rallies, protests, and other First Amendment-protected events, where they sometimes engage in violence against individuals whom they perceive as threats to their values.

² A group of individuals, some of whom associate with militias, identify as “Three Percenters” (also known as “III%” or “3%”), based on their view that only three percent of American colonists took up arms against the British during the American Revolution. Some Three Percenters liken the present-day United States Government to British authorities that infringed on civil liberties in the period leading up to and during the American Revolution. Many independent or multi-state militia groups incorporate “III%” into their names.

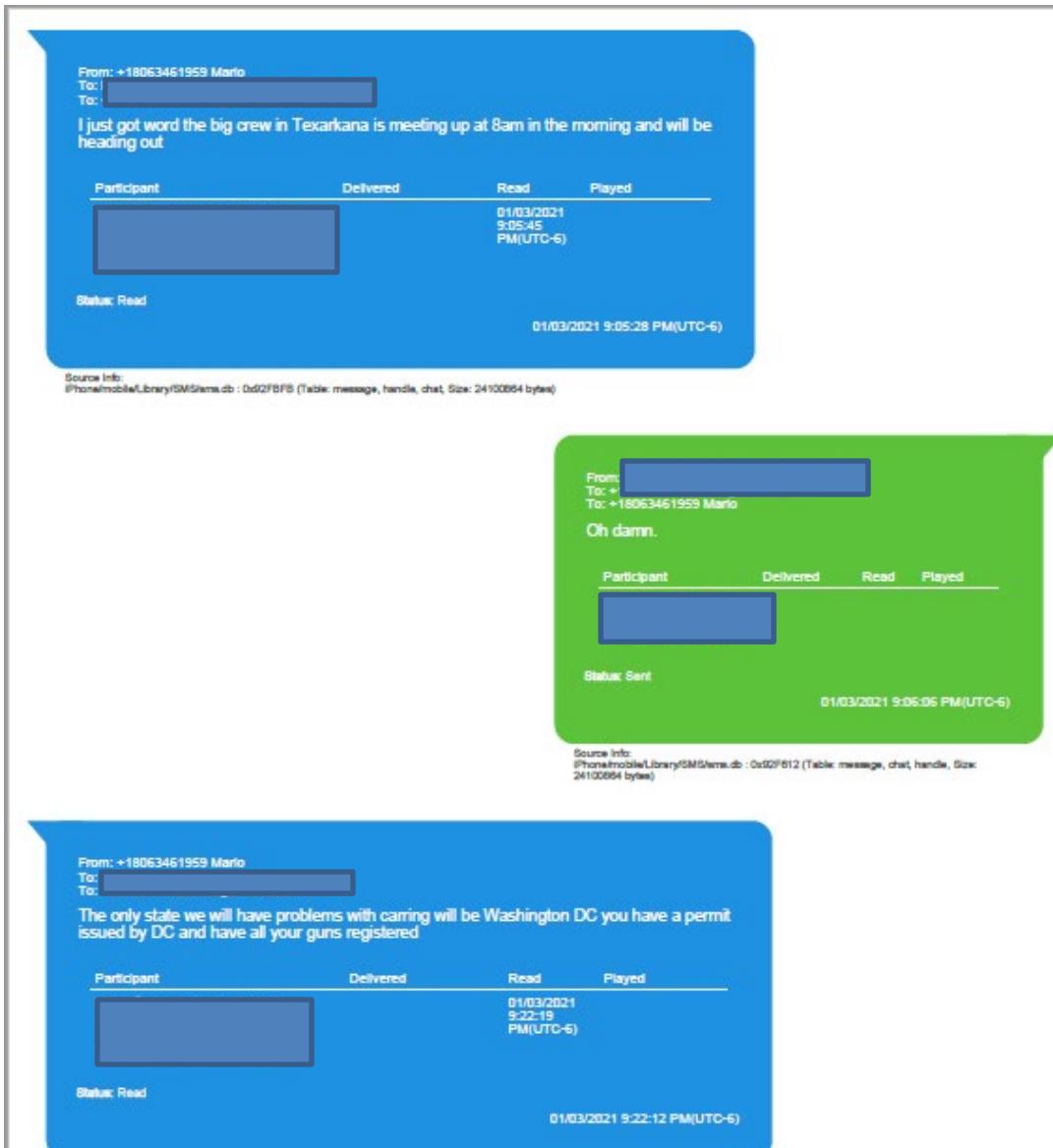


Figure 5



Figure 6



Figure 7

Mares, Subject-1, and Subject-2 subsequently traveled via Mares's vehicle (a 2008 GMC Sierra 2500 from Ballinger, Texas, to Fairfax, Virginia, on January 4 and 5, 2021. During the trip, Subject-1 posted to social media, including Figure 8 below, of himself (on the left wearing a camouflage jacket and camouflage hat), Mares (on the right wearing a black shirt, black hat, and sunglasses), and Subject-2 (in the middle wearing a plaid shirt and olive or tan hat):

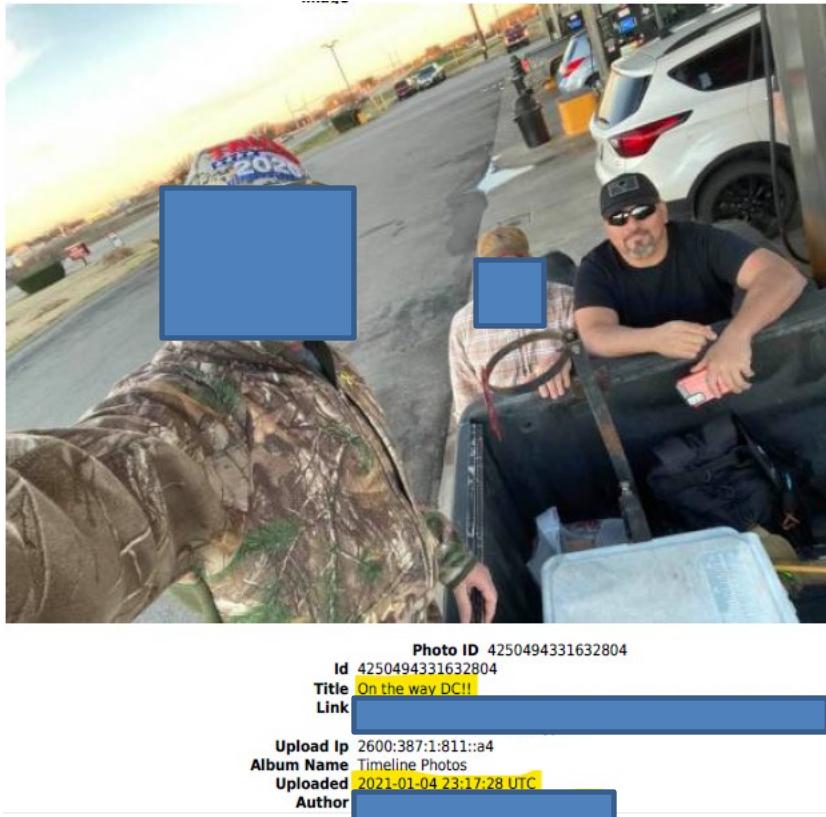


Figure 8

Mares, Subject-1, and Subject-2 arrived at the Comfort Inn located at 11180 Fairfax Blvd, in Fairfax, Virginia, on the evening of January 5, 2021. The employee who checked them in was interviewed by the FBI and recalled the three men based on the firearms on their hip and because they were not wearing masks.³ The three men slept in the Comfort Inn that night before leaving for Washington, D.C., early in the morning on January 6, 2021.

CCTV footage from the Fairfax Comfort Inn taken between 6:28 AM and 6:38 AM on January 6, 2021, showed Subject-1 loading several bags onto a pushcart and pushing the cart down the hall with Mares and Subject-2, as depicted in Figures 9 and 10 below. The CCTV footage also

³ January of 2021 was a date in the middle of the COVID-19 pandemic. It was common for persons to wear protective medical masks at the time to avoid transmission of the disease.

appears to show Mares and Subject-1 both carrying firearms on their hips, including the image of Mares in Figure 11.



Figure 9

Figure 10



Figure 11

CCTV from outside the Comfort Inn also showed the men subsequently loading those bags onto a pickup truck.

Historical cell site location information (“CSLI”) associated with Subject-1’s cellular phone indicated that Subject-1 arrived in Washington, D.C. at approximately 7:28 AM on January 6, 2021, that he travelled back into Northern Virginia sometime around 7:37 AM, and that, by 9:45 AM, he was back in Washington, D.C., where he remained until approximately 5:30 PM. Figure 12 below, which Subject-2 posted to Facebook at approximately 9:15 AM EST (adjusted for UTC time) on January 6, 2021, depicted Subject-1 (outside vehicle) with Subject-2 (front passenger) and Mares (driver) with the caption “In DC with my friends.”



Figure 12

Photographs, videos, and other evidence, including the CSLI for Subject-1 described above, indicated that Mares, Subject-1, and Subject-2 spent several hours in Washington, D.C. on January 6, 2021. First, the men attended the Rally outside the White House between approximately 9:45 AM and approximately 12:15 PM. They then walked down the National Mall, towards the

U.S. Capitol building between approximately 12:15 PM and 2:30 PM. Finally, they entered and remained on U.S. Capitol grounds until approximately 4:30 PM.

Subject-1 used his cellular telephone to record video and take pictures of the events on January 6, 2021, and post them or livestream them to social media. Of note, as depicted in Figures 13-16 below, while Mares was in Washington, D.C., he can be observed with an object on his right hip underneath a camouflage jacket:



Figure 13



Figure 14



Figure 15



Figure 16

Publicly available images and video captured Mares (circled in blue), Subject-1 (circled in yellow), and Subject-2 (circled in green) on U.S. Capitol grounds during the riot and/or civil disorder on the restricted United States Capitol grounds on January 6, 2021, including Figures 17 and 18 below:



YouTube Trump Wild Rally Washington D.C. - Outside The Capitol Building (Part 04) (January 6th, 2021) <https://www.youtube.com/watch?v=UA0NR2JoJWw&t=1070> (No longer available)
<https://capitol-hill-riots.s3.us-east-1.wasabisys.com/User%20Submissions%20-UNSORTED/Content/Trump%20Wild%20Rally%20Washington%20D.C. %20Outside%20The%20Capitol%20Building%20%28Part%2004%29%20%28January%206th%2C%202021%29.mp4> Timecode: 17:49



<https://www.alamy.com/pro-trump-protesters-storm-into-the-us-capitol-during-clashes-with-police-during-a-rally-to-contest-the-certification-of-the-2020-us-presidential-election-results-by-the-us-congress-in-washington-us-january-6-2021-reutersshannon-stapleton-image396805935.html?irclickid=3>

Figures 17 and 18

In particular, Figure 18 shows Mares on the western side of the Capitol, standing on the inauguration stage area and looking towards the Lower West Terrance (LWT) tunnel. The LWT tunnel was a particularly violent area of the Capitol grounds on January 6, with dozens of officers

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fighting back the mob for hours as they were assaulted with oleoresin capsicum (OC) spray, sticks, clubs, and an assortment of homemade weapons.⁴

Mares, Subject-1, and Subject-2 returned to the Fairfax, Virginia Comfort Inn around 6:00 PM EST on January 6, 2021. A witness observed the three men return to the Fairfax hotel that evening wearing body armor and smelling of tear gas. According to that witness, upon their return from the Capitol, the three men had firearms on their hips and unloaded a rifle carrying case from the bed of the pickup truck, inside which a rifle could be seen. That witness also observed two ammunition containers, similar to metal ammunition containers used by the military, and military-style backpacks in the bed of the pickup truck.

At approximately 6:15 PM EST, Subject-1 posted the photograph in Figure 19 of six firearms, magazines, and the hats the appear to have been worn by Mares, Subject-1, and Subject-2 that day to Facebook with the caption “**Fuck Washington, DC**”:

⁴ The government has no evidence at this time that Mares participated in the assault, but, given where he was on the Capitol grounds, Mares would have been aware of the nearby violence.

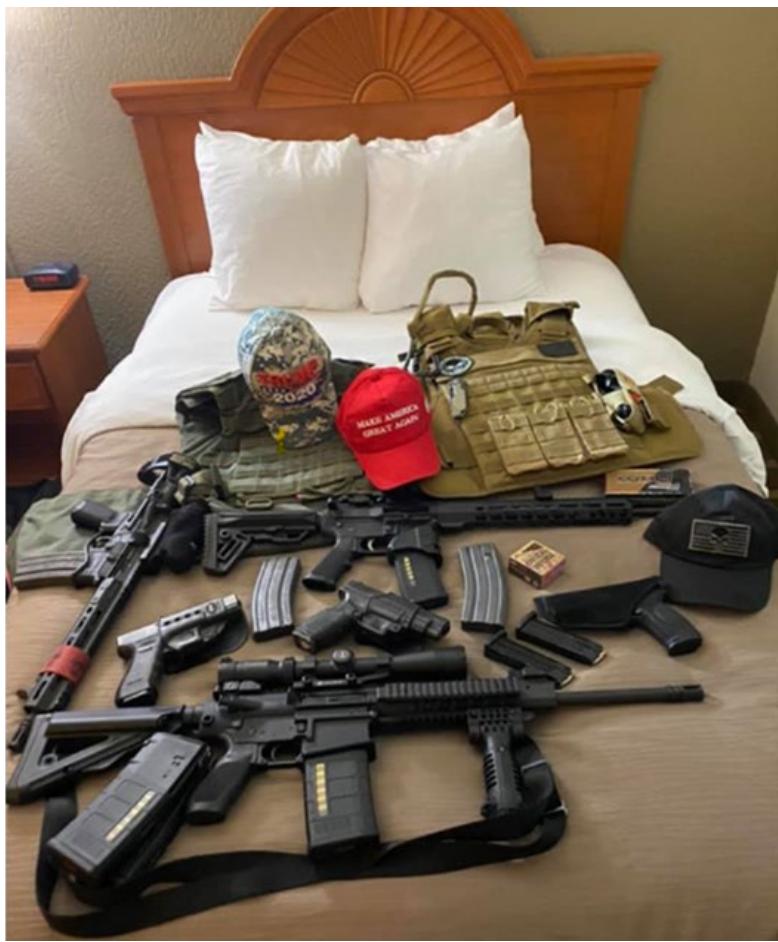


Figure 19

Around 11:00 PM EST, the three men left the Fairfax Comfort Inn and began driving back to Texas. In an additional video posted to Subject-1's Facebook around that time, as the men are driving, one of the men can be heard stating words to the effect of "we have to leave because the police are hunting Trumpsters" and "with the firearms we can't get no felonies."

As depicted below, on January 8, 2021, Mares sent several text messages to Subject-1 and Subject-2 in which he, among other things, stated that "[t]his was a stage by Trump for us . . . he wanted us to get to the capitol," and predicted that "the arrests of all the corrupt are coming." Mares informed the group that he believed that the former president "used us to help put [in] the insurrection act."

On January 13, 2021, Mario Mares texted the group, “We are fucked in every way possible”, to which Subject-1 responded, “Yep. Censorship at its finest”.



Figure 20

Mares' Arrest – August 2, 2023

Following the Grand Jury’s indictment of Mares, on August 2, 2023, the FBI arrested Mares arrested at his residence in Ballinger, Texas for his crimes at the Capitol, and searched his home pursuant to a federal search warrant. During the search, agents recovered numerous items tying Mares to the attack on the Capitol. As depicted in Figures 21-24, agents recovered a shirt, hat, and patch similar to the ones Mares wore at the Capitol, along with the phone case he was observed carrying on January 6:



Figure 21



Figure 22



Figure 23



Figure 24

Agents also recovered two ammunition boxes consistent with the boxes unloaded by Mares, Subject-1, and Subject-2 after returning from Washington, D.C. on January 6:



Figure 25

Agents also recovered numerous firearms, including firearms consistent with the photograph taken and posted by Subject-1 the evening of January 6. As described below, Mares admitted that he brought the semi-automatic handgun depicted in Figure 27 to Virginia, though he denied taking the firearm into Washington, D.C., a claim belied by the evidence.



Figure 26

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Figure 27

Finally, agents also found evidence of Mares' affiliation with the Three Percenters.⁵ Agents found a Three-Percenter decal on the back of Mares' pickup, along with a Three-Percenter patch on a plate-carrier inside his residence.



Figure 28

⁵ See FN 2, *supra*.

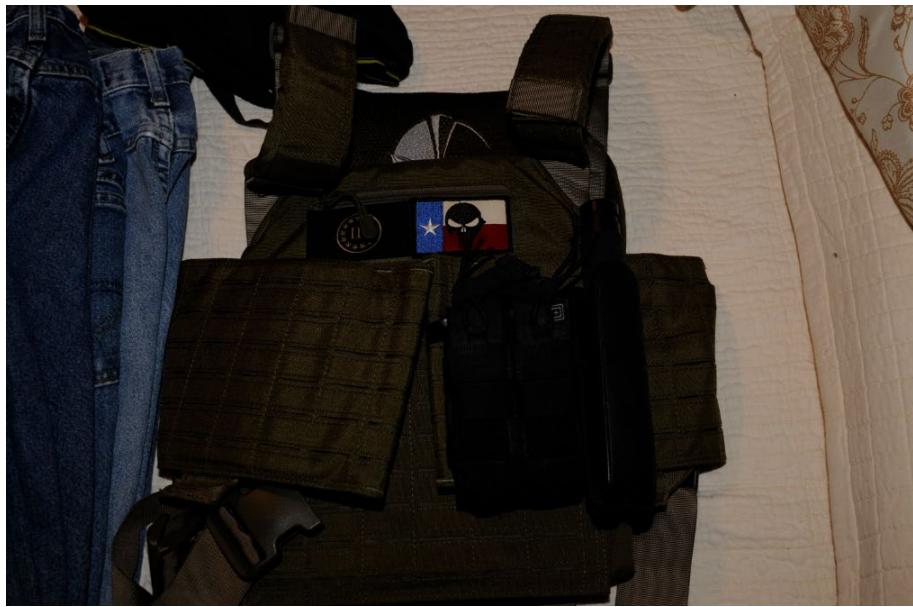


Figure 29

The FBI attempted to interview Mares, and Mares waived his *Miranda* rights and agreed to speak with agents. During the interview, Mares admitted to taking his black Smith and Wesson 9-millimeter pistol with him as he traveled from Texas to Fairfax, Virginia:

- FBI SA: “So specifically, that black gun, that one that you took with you January 6 to Washington, D.C., where is that gun right now, to the best of your knowledge?”
- Mares: “It’s, I think it’s in my safe.”

Government’s Exhibit 1 at 3:18-3:27.

Mares denied, however, bringing the handgun with him into the District of Columbia, and claimed he left it in his hotel room in Virginia. However, Mares was insistent that if he *did* bring a firearm into D.C., it will his lawful right to do so:

- FBI SA: “So you understood that bringing a firearm into the District of Columbia was against the law?”
- Mares: “Yeah, my firearm, yeah.”
- FBI SA: “You understood that?”
- Mares: “Yeah.”
- FBI SA: “Did you bring a firearm into the District of Columbia?”

- Mares: “No. That’s what I’m saying, no. That’s what I’m saying. It’s, I don’t know what, what, who saw what or what, I mean, it’s not like I was carrying my AR or anything on my back or anything, I mean…
- FBI SA: “Right. We’re pretty much asking the handgun specifically.”
- Mares: “And even if I did, if I had carried, a rifle or anything it still would have been a legal right, I mean it’s, it’s a Constitutional right to bear arms no matter what.”

Government’s Exhibit 1 at 6:47-7:26.

Mares initially denied bringing any other firearms with him, but when pressed, Mares admitted bringing an AR-style rifle with him to Virginia. *See* Government’s Exhibit 1 at 8:15-8:55.

Mares admitted to making the post on freedomlake.com that, if individuals could not make it to the rally, they needed to “drag out” and either arrest or execute corrupt politicians. *See* Figure 1. He also professed his ongoing commitment to and support of engaging in acts of political violence against individuals he perceived as corrupt or crossing tyrannical lines:

- FBI SA: “So you think that this country has to the point to where we’re ready for another revolution? Yes or no?”
- Mares: “This country has come to somewhere where everybody needs to look at it and say, what are we doing? And like I said, if you, if the law, and anybody is good, it’s good, but when you cross that line of tyranny, man, yes, you should be strung up like in the old days and hung for tyranny.”
- FBI SA: You feel strongly about that?
- Mares: “I mean, if you’re corrupt, Yes.”

Id. at 16:35-17:13.

ARGUMENT

A. The § 3142(g) Factors Weigh in Favor of Detention

A defendant must be detained pending trial, if the Court determines that no condition or combination of conditions “will reasonably assure the appearance of the person as required and

the safety of any other person and the community[.]” 18 U.S.C. § 3142(e). The government assesses each of the § 3142(g) factors as they apply to this case:

1. The Nature and Circumstances of the Offense

The nature and circumstances of the offense weigh heavily in favor of detention. Mares brought a firearm to the United States Capitol and knowingly and willfully participated in a riot that was designed to prevent the United States Congress from certifying the results of the 2020 Presidential election. In the leadup to the January 6, 2021 Rally, Mares espoused beliefs that other like-minded “Patriots” should engage in acts of political violence and, to this day, Mares continues to hold those beliefs. He is a danger to this community, and detention is the only means by which the community may be secure.

2. Weight of the Evidence

The weight of the evidence is strong. In addition to his partial-confession to federal agents, Mares was photographed before, during, and after the Rally with what appears to be a firearm. Witnesses have given statements that they saw Mares carrying ammunition boxes and a rifle case out of his truck as he returned from Washington, D.C., on the evening of January 6. And text messages confirm that Mares and his traveling companions discussed bringing firearms into Washington, D.C. The idea that Mares brought multiple firearms with him to Washington, D.C. on January 6 (consistent with his perceived mission to rid the country of corrupt politicians), but then suddenly left all firearms in a hotel is belied by the evidence, and importantly, contradicted by a formal indictment by the grand jury. This factor also weighs in favor of detention.

3. The Defendant’s History and Characteristics

Notwithstanding Mares’s lack of criminal history, his history and characteristics nevertheless weigh in favor of detention. Mares admitted to the FBI he *still* believes that “corrupt”

elected officials should be executed. This violent ideology, even years after the events of the 6th, shows that no set of bond conditions imposed by this Court can assure the safety of the community.

4. Nature and Seriousness of the Danger Posed by the Defendant's Release

Mares poses a substantial risk of danger to the community if he is released. Mares participated in a riot, armed with a firearm, with the intent to obstruct the certification of the Electoral College vote. He currently embraces violent rhetoric that he previously acted upon (bringing a firearm to a riot during one of Congress's most important proceedings—the peaceful transfer of power from one administration to the next) and when confronted by law enforcement and given the opportunity to retract or explain those statements, he doubled down.

CONCLUSION

Mares is eligible for Detention pursuant to 18 U.S.C. § 3142(f)(2)(B). All four of the Bail Reform Act factors weigh in favor of detention and there are no conditions, or combination of conditions, which would reasonably assure the safety of the community if Mares's motion for conditional release is granted.

WHEREFORE, the United States respectfully requests that this Court enter an order declaring that Mares be detained without bond pending trial.

Respectfully submitted,

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